Court No.2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

A.O. No. 1423 of 2001 (Old No.362 of 2000).

National Insurance Company Ltd.,
through its Assistant Manager,
Mahatma Gandhi, Civil Lines, Allahabad.

…….. Opp.party/Appellant

Versus

(1)Smt.Anju Malik widow of Late Raj Kumar
(2)Miss Pooja Choudhary D/o Late Raj Kumar,
(3)Master Gaurav Malik,
(4)Master Mannu Malik
both Sons of Late Raj Kumar,
All R/o House No.405 Daya Nand Nagar,
Shamli (near Barhana Bus Stand),
Muzaffarnagar.

…….Claimant/Respondents

(5)Shri Imran S/o Sri Shammi,
R/o Mohalla Maidam Sarai,
Near Darpan Talkies, Police Station Qutub
Sher District-Saharanpur.
(6)Sri Gajye Singh S/o Sri Ghaseeta Singh,
R/o 33 Dehradun Road, Rishikesh.

…….. Opp.parties/Respondents.

Sri Lalit Belwal, learned Counsel for the appellant,

Date: 25th Aug.,2004

Hon'ble P.C. Verma,J.
Hon'ble B.S. Verma,J.

This appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988 against the judgment and order dated 15.12.1999 passed by the Motor Accident Claims Tribunal, Addl. District Judge, Dehradun in Motor Accident Claim Petition No.165 of 1997, whereby the claim petition filed by the claimants has been decreed for

Rs.7,68,000/- alongwith interest at the rate of 9% per annum from the date of filing of the petition till the date of payment.

2- Brief facts giving rise to this appeal are that deceased Raj Kumar was travelling on his two wheeler scooter bearing registration No. DL-IS-3198 on 20.5.1997. He stopped the said scooter behind a vehicle Vikram bearing registration No. UMU 9941, then a Tanker bearing registration No. UP-08-1563, which was being driven rashly and negligently, came from opposite direction hit the Vikram and due to the great impact of the Tanker, the deceased fell on the road and sustained injuries on his body. The said accident occurred on 20.5.1997 at 9.00 P.M. near State Bank Training Centre, Dharampur. Due to the injuries received in the above said accident the deceased died in the night in the hospital. The deceased Raj Kumar was a contractor and was earning Rs. 5000/- per month from the contract works and besides it he is also earning Rs. 5,000/- per month from agriculture work. The petitioners filed the claim petition for a sum of Rs. 36,70,000/- for compensation.

3- Before the Tribunal the claim petition was contested only by the Opp.party No.3- Insurance Company. In its written statement the Insurance Company alleged that the petition is bad for non-joinder of the insurer, insured and driver of the Vikram which was the direct and proximate cause of the accident. The insurance policy has been obtained by misrepresentation and fraud and hence the Insurance Company is not liable for any compensation as the policy is void abinitio.

4- On the pleadings of the parties, the Tribunal has framed as many as six issues in the case and after

recording the evidence of the parties allowed the claim petition accordingly.

5- The only submissions made by the learned counsel for the appellant is that the insurance policy of vehicle No. UP 08-1563 had been obtained by concealment of facts and misrepresentation. Therefore, the policy was void abinitio and, as such, the Insurance Company could not be held liable to make payment of any claim. We have gone through the record of the appeal and perused the impugned judgment. The Tribunal while deciding this issue as issue No.4 gave its finding that the entire burden to prove this issue was upon the Insurance Company. The Insurance Company has produced only one witness, D.W.1 Imran who was the driver of the offending vehicle (Tanker). He was not deposed anything about the validity of the policy and about the so-called fraud and misrepresentation as alleged by the Insurance Company to have been caused by the Opp.parties Nos. 1 & 2 in obtaining the policy of the Insurance, except the assertions made in para-26 of the written statement that the policy has been issued by misrepresentation and fraud. The assertions made by the Insurance Company in the pleading must have been proved by it by adducing cogent evidence. The learned Tribunal found that there is no evidence on record to support the contention on the Insurance Company that the insured person had obtained the policy of Insurance by fraud and misrepresentation and held that the Opp.party-Insurance Company is liable to pay the compensation, if any. We are satisfied that the learned Tribunal has recorded a correct finding on this issue under the provisions of Section 238 of the Indian Contract Act in which it has been provided that the Company is wholly liable for the act and omission on the part of it. The findings given by the learned Tribunal

does not call for any interference. The grounds taken in the appeals have no force and are rejected.

6- No other ground is pressed.

7- The appeal has no force on merit and is dismissed. The impugned judgment and award is upheld. No order as to costs. The amount deposited in this Court shall be remitted to the Motor Accident Claims Tribunal concerned within a period of two months from today.

(B.S.Verma,J.) **(P.C.Verma,J.)**

P.Singh